

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 2738 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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MANGABHAI LALJIBHAI RATHAVA - Petitioner(s)
Versus
CHUNABHAI CHHELABHAI NAYAK & 3 - Respondent(s)

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Appearance :

MR PM DAVE for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 05/02/2007

ORAL JUDGMENT

1.The short facts of the case are that the petitioner had purchased the land. However, since the land was restricted tenure, the sale

was declared invalid and the land was ordered to be forfeited as per the order dated 26.07.1976. It appears that as per the petitioner, thereafter, the order for forfeiture of the land was not acted upon and the petitioner continued to remain in possession of the land. On 01.03.1989, the order was passed by the Assistant Collector, Dahod for allotment of the land on permanent basis to respondent Nos.1 & 2. As the possession of the petitioner was sought to be disturbed, the petitioner preferred Civil Suit No. 246/89 and in the said Suit, the injunction was ultimately granted by the District Court as per the order dated 12.12.1989 in Misc. Civil Appeal No. 102/89 and the learned counsel is not having any instruction as to whether the Civil Suit is pending or disposed of now.

2. It appears that the petitioner also preferred Appeal against the order for grant of the land on permanent basis to respondent Nos. 1 & 2 being Appeal No. 86/89 and in the said Appeal, the District Collector found that as the matter is pending before the Civil Court, until the matter is finalised by the Civil Court, the status quo be maintained. The matter was carried in revision before the State Government by respondent Nos. 1&2 and the State Government found that the Collector ought to have decided the matter on merits and the possession of the

petitioner can be said as unauthorised and therefore, the State Government allowed the revision and set aside the order of the Collector. Under these circumstances, the present petition.

3. Heard Mr. Dave, learned counsel for the petitioner and Mr. Chayya, learned AGP for the State Authorities. Respondent Nos. 1 & 2 have chosen not to appear.
4. It may be stated that when the petition came to be admitted on 11.07.1996, the ad interim relief was confirmed. Further, it has been stated by the learned counsel appearing for the petitioner that the petitioner is in possession of the land even as on today.
5. As such, the perusal of the order passed by the State Government shows that the State Government has rightly observed that the District Collector ought to have decided the matter on merits and ought not to have ordered for maintenance of the status quo till the order of the Civil Court is in operation. It does appear that it was required for the District Collector to decide on the aspects of legality and validity of the order for re-grant of the land to respondent Nos. 1 & 2 and instead of deciding the said aspects on merits, the District Collector has directed for maintenance of status quo until the suit is finally disposed of. However, even if

the State Government found that the District Collector has not exercised the appellate power on the aspects of re-grant of the land, it was required for the State Government to remand the matter to the District Collector for his decision in accordance with law and instead of further exercising the power for remand, the State Government has only set aside the order of the District Collector. It appears that what will be the effect of Civil Suit and the interim order passed by the Civil Court is also not properly considered by the State Government.

6. Under these circumstances, I find that the order of the State Government deserves to be modified by giving directions to the District Collector to consider the matter on its merits on the aspects of re-grant of land to respondent Nos. 1 & 2. It may be that while deciding the said aspects, the pendency of the proceedings of the Civil Suit and the orders passed therein may also be considered by the District Collector but on that basis, it cannot be said that the legality and validity of the order of re-grant is not to be finally adjudicated while exercising the appellate power.

7. Hence, the impugned order passed by the by the State Government dated 30.01.1996 is not disturbed so far as setting aside of the order passed by the District Collector is concerned,

but the said order shall stand further modified to the effect that the District Collector shall decide the Appeal No. 86/89 in accordance with law on merits on the aspects of re-grant of the land to respondent Nos.1 & 2, after giving opportunity of hearing to all concerned keeping in view the observations made by this Court in the present Judgment.

8. Petition is partly allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

(JAYANT PATEL, J.)

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